

REMARKS

Claims 55 through 90 are currently pending. Claims 65 through 72, 74 through 83, 85 and 88 were withdrawn from consideration. The remaining claims were rejected in the Office Action dated December 24, 2008, and the matters raised in the Office Action will be addressed in the same order presented therein.

I. Information Disclosure Statement

The Office Action noted that the Information Disclosure Statement dated December 29, 2006 is being considered. Applicants request that the initialed Form PTO-1449, a copy of which is enclosed for the Examiner's convenience, be completed and returned to the undersigned representative when that review is complete

II. Rejection of Claims 84 and 90 under 35 U.S.C. § 112 Rejections

Claims 84 and 90 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claims 84 has been amended as shown above to clarify that the claimed package assembly exhibits an orange color, to filter blue light while providing for a transparent appearance. This is helpful because some dental compounds are sensitive to blue light, but because orange coloration filters blue light, the package can both protect the dental material while providing sufficient translucency to allow a user to see the contents of the package assembly. Claim 90 has also been amended as shown above to clarify the claim and remove the basis for the rejection under 35 U.S.C. 112. Reconsideration of the rejection of these claims is respectfully requested.

III. Rejection of Claims 55-59, 61, 62, 84, 87, 89, and 90 Under 35 U.S.C. § 102(b)

Claims 55 through 59, 61, 62, 84, 87, 89 and 90 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,249,963 (McGarrigle). McGarrigle, as shown in Figure 4 of that reference, was said to include the elements of independent claim 55, which for convenience will not be repeated here.

Claim 55 has been amended as shown above to clarify an aspect of the present invention that is not disclosed in or suggested by McGarrigle: the first and second levers having free ends extending essentially in the same direction away from the hinge when the container is either open or closed. This feature is clearly illustrated in the Figures and described in the application as filed. McGarrigle, on the other hand, discloses only one lever having a free end. The other structure equated in the Office Action with the claimed second lever is actually a ring for a user's finger, and a closed ring cannot have a "free" end as that term is used with respect to the present invention. In fact, the only comparable structure to the claimed second lever is leg(s) 30, which clearly extend(s) in a different direction than the handle portion 14a of McGarrigle. Leg 30 is not positioned or adapted to permit a user to use it in conjunction with handle portion 14a in the manner recited in claim 55. Moreover, the claimed structure is also believed to be more easily manufactured than the structure shown in McGarrigle. For at least these reasons, the invention of independent claim 55 is believed to be patentable under 35 U.S.C. 102(b) over McGarrigle, and reconsideration of the rejection of that claim is respectfully requested.

The remaining claims rejected under Section 102 over McGarrigle include all of the limitations of independent claim 55, and are therefore patentable for at least the same reasons. Reconsideration of the rejection of those claims is also requested. Applicants additionally note that certain features recited in the dependent claims are not disclosed in or suggested by McGarrigle, including the features of amended claim 84. That claim adds to the features of claim 55 that the package assembly exhibits an orange color, to filter blue light while providing a transparent appearance, as noted above. The disclosure in McGarrigle noted in the Office Action, however, teaches that the McGarrigle device is "light impervious," not transparent. This disclosure does not anticipate the features of claim 84, and in fact users are believed to prefer a substantially transparent device as claimed in claim 84 because they can see whether the device includes any dental material and if so, how much. Accordingly the dependent claims, specifically including claim 84, are believed to be allowable.

IV. Rejection of Claims 60 and 87 Under 35 U.S.C. § 103

Claims 60 and 87 were rejected under 35 U.S.C. 103 as being unpatentable over McGarrigle in view of U.S. Patent No. 5,204,130 (McDevitt et al.). Claims 63, 64, 85, and 87 were rejected under 35 U.S.C. 103 as being unpatentable over McGarrigle in view of U.S. Patent No. 5,938,018 (Keaveney et al.). Lastly, claims 73 and 87 were rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle in view of U.S. Patent No. 5,660,273 (Discko, Jr.).

All of those claims are patentable over the base reference, McGarrigle, for the reasons noted in Section III, above, which are incorporated by reference herein. The secondary references do not remedy the absence in the disclosure of McGarrigle of the claimed first and second levers, and accordingly the rejected claims are believed to be patentable over any combination of those references.

V. Conclusion

For the reasons noted above, the pending claims are believed to be in condition for allowance, and reconsideration of the application is respectfully requested. If a telephonic conference would be useful in addressing any remaining matters in the application, the Examiner is invited to contact the Applicants' undersigned representative at 651-736-4050.

Respectfully submitted,

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Date

By: /Peter L. Olson/

Peter L. Olson, Reg. No.: 35,308

Telephone No.: 651-736-4050

Office of Intellectual Property Counsel
3M Innovative Properties Company
Facsimile No.: 651-736-3833